Amendment was put and carried.

Clause 34 as amended was put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir I rise to move the following amendment:—

Insert the following as Schedule to the Bill.—

The Schedule.

See section 34.

Enactments repealed.

Year	No.	Short Title	Extent of repeal.
1091	III	The Cochin Steam Boilers and Prime Movers Regulation.	The whole
1095	XVI	The Cochin Steam Boilers and Prime Movers (Amendment) Regulation.	do
1107	II	The Cochin Steam Boilers and Prime Movers (Amendment) Regulation.	do
1107	V	The Cochin Steam Boilers and Prime Movers (Amendment) Regulation.	do

Schedule was put and carried.

Clause 1 was put and carried.

Title and Preamble were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I beg to move that the Bill may be taken up and finally passed tomorrow.

Motion was put and carried.

The Cochin Village Panchayat Regulation Amendment Bill—Sec. 56.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I beg to introduce the Cochin Village Panchayat Regulation Amendment Bill (Section 56). The reason why

LIBRARY ARCHIVES Kerala Legislative Assembly

this amendment is necessary has been set out in the statement of objects and reasons. No specific method has been definitely prescribed by the Government in the Cochin Village Panchayat Regulation for paying decree debts either in the Courts or outside the Court. Some difficulty was felt in practice on account of the absence of such a provision and this Bill is intended to remedy that defect. It is of course absolutely not of a controversial nature and I do not think it requires any further explanation. I move that the Bill be read and passed.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—I second it.

Mr. E. Ikkanda Warriar *(Urakam).*—I wish to know what is the practical difficulty felt under the existing Regulation. I do not find much difference between the original Regulation and the amendment that is proposed to be introduced.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— I shall explain. The Hon'ble Member will notice that the procedure stated in Section 56 of the Cochin Village Panchayat Regulation V of 1089 has been a little more definite and specific. What is stated here is—

"Satisfaction of decrees passed by a Village Panchayat Court can be made by

(a) payment of the decree amount into the Court whose duty it is to execute the decree and

(b) payment out of court to the decree holder or his agent duly authorised in writing to receive such payments or otherwise as the Court wh ch passed the decree direct."

There is no provision in regard to that effect in the old Regulation. There was a difficulty felt by these Panchayat Courts as to whether the full amounts should be presented before the Court. All payments or adjustments shall be endorsed by the bench on the decree and recorded in the register of suits. By this amendment, it is not necessary that there should be a full bench or even a minimum number of judges. Such judges as are present in the Court can attest.

Mr. T. A. Ramachandra Ayyar *(Nellayi).*—Even without quorum can they attest it?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The provision is 'in the open Court.' There may be a much larger number of judges than would constitute a mere

LIBRARY ARCHIVES Kerala Legislative Assembly

court. But the question is whether all the judges should be present. It won't be a bench without a quorum, but the quorum does not mean all the judges. It is only to clear such difficulties.

Mr. T. K. Nayar *(Pazhayannur).*—Was there any such difficulty?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The point was specifically raised.

Mr. E. Ikkanda Warriar *(Urakam).*—Word for word, it appears to be the same.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I move that the Bill may be read in Council.

Motion was put and carried.

Secretary to the Council.—The title of the Bill is "The Cochin Village Panchayat Regulation Amendment Bill".

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I beg to move that the Bill may be taken up for consideration forthwith suspending the Standing Order. It is only to get over the practical difficulty that is felt both in receiving and paying money and also for the safety of the litigants that this provision is made.

Mr. E. Ikkanda Warriar *(Urakam).*—My object is not to oppose the Bill. As it is, the same Bill is put in different words, probably to create trouble afterwards. Whether there had been real trouble, I want to know that.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I have no objection to read to my Hon'ble Friend the letter on which the Bill was started.

"It has been the general practice that the decretal amounts, etc., deposited by parties in Panchayat Courts are kept by the Panchayat Presidents concerned until the parties turn up and receive payment. In certain cases, the Presidents have to keep these amounts with them in safe custody for months and years together, the parties concerned not turning up to receive payment in spite of repeated notices issued to them for doing so. In other Civil Courts, the practice is not to receive decretal amounts, etc., in cash, but to credit them to Civil Court Deposits in the Treasury. There is at present no personal deposit account in the Treasury for Panchayat Courts as in other Civil Courts and the amounts deposited in Panchayat Courts cannot but be kept by the Panchayat Presidents concerned."

On account of these difficulties it was thought better to explain clearly and amend the Regulation accordingly.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. P. Govinda Menon *(Adur).*—On a point of information, 'Satisfaction of decree passed by a Village Panchayat Court shall be made by (b) payment out of Court to the decree holder.' This is stated something like an explanation below. 'Payments made to the decree holder shall be made in the open court.' Are they not inconsistent?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—We make provision for payments out of court. Payments shall be made in open court. Satisfaction of decrees passed by a Village Panchayat Court shall be made by payments into court. That is one. (2) Payments out of court to the decree holder. That is not payment into court. Payments into court and payments out of court are different, and the facts of such payments shall be recorded and attested by the judges who constitute the bench. That is, there are two methods of payment; one to the agent and the party in court and another to the party outside the court. Both are separately provided for.

Mr. P. Govinda Menon *(Adur).*—In (b), the phrase 'out of court' is unnecessary.

Mr. Thomas Manjuran.—*(Government Advocate and Law Officer).*—That is to distinguish it from payments into court.

Motion that the Village Panchayat Regulation Amendment Bill be taken into consideration was put and carried.

Mr. President.—The question is that clause 2 stand part of the Bill.

2, Delete section 56 of Regulation, V of 1089, and substitute for it the following:—

"56. Satisfaction of decrees passed by a Village Panchayat Court shall be made by:—

Payment of money under a decree or other adjustment to be made or recorded in open court.

(a) payment of the decree amount into the Court whose duty it is to execute the decree, and

(b) payment out of Court to the decree-holder; or his agent duly authorised in writing to receive such payment, or otherwise as the Court which passed the decree directs.

Payments made to the decree-holder or his agent shall be made in open Court and the fact that such payment was made shall be recorded in writing and signed by the decree-holder or his agent in open Court and attested by the Judges then constituting the Bench:

And if the decree is otherwise adjusted to the satisfaction of the decree-holder, the nature of such adjustment shall be recorded in writing and

LIBRARY ARCHIVES Kerala Legislative Assembly

signed by him or his agent in open Court and attested by the Judges then constituting the Bench.

All payments or adjustments shall be endorsed by the Bench on the decree and recorded in the register of suits.

No payment under a decree and no adjustment of a decree in whole or in part shall be recognised unless it has been made or recorded in the manner prescribed by this section or in the Court of the District Munsiff.

Mr. A. Narayana Menon *(Vyttila)*.—Sir, I beg to move the following amendments:—

"Delete the four paragraphs coming after (b), and substitute the following for them:

"(i) where payment is made under clause (a) notice of such payment shall be made to the decree holder,

(ii) where payment is made under clause (b) to the decree holder or his duly authorised agent, or where the decree is otherwise adjusted in whole or in part to the satisfaction of the decree holder or his duly authorised agent, the decree holder or his duly authorised agent shall certify such payment for adjustment to the court whose duty it is to execute the decree and the court shall record the same accordingly.

(iii) the judgment debtor also may inform the court of such payment or adjustment and apply to the court to issue a notice to the decree holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified and, if after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(iv) a payment or adjustment which has not been certified or recorded as aforesaid shall not be recognised by any court executing the decree."

As the Member for Adur pointed out, there is some ambiguity in the wording of the bill as introduced. It is just to get rid of that and also to make the provision more or less on the same lines as those in the Cochin Civil Procedure Code that I move this amendment. I shall explain the purpose of the amendment. Of course, according to the practice obtained in the Civil Courts, decree debts are paid in three forms, either in court, out of court, or as the court directs. They are all considered in order in the amendment. The amendment that I propose is in accordance with the provision contained in rules 1 and 2 of order XXI in the new Civil Procedure Code. All difficulties will crop up only when payments are made out of court. Facilities are made here for judgment debtors who have made payments out of court to apply to the court; then the court has to order notice to the decree holder. If the latter appears and contests there will be an enquiry; else the satisfaction will be recorded. My purpose is the same as that in the

LIBRARY ARCHIVES Kerala Legislative Assembly

main bill. Considering the fact that the Panchayat Regulation has to be administered by persons who do not know much of law it is better that terms are made clear and it is with that object that I have tabled this motion.

Mr. A. V. Moothedan *(Chalakkudi).*—I oppose this amendment. One of the fundamental principles of the Panchayat Regulation is that the provisions regulating the Panchayat Courts, should be very simple. Otherwise, the Panchayat Court judges who have to administer the law, will find it very difficult to carry on. Most of these judges are not highly educated and they will not be able to understand the law, if you make it so complicated by introducing the elaborate provisions of the Civil Procedure Code here. Therefore I vehemently oppose this amendment.

Mr. P. Govinda Menon *(Adur).*—I also think that the amendment is not called for. As the learned Law Member just now explained, payment out of court, that is, payment by the judgment debtor to the decree holder out of court is not contemplated by that section, and the reason seems to be that when a decree is passed by a Panchayat Court, in order to avoid complications, payment should be either in court or before the presence of the judges in the court house. The learned mover of the amendment seeks to bring the law in conformity with the provisions of the Civil Procedure Code. Fist of all, he does not say, within what period, the judgment debtor should apply to court to get a satisfaction of the decree debt.

Mr. A. Narayana Menon *(Vyttila).*—The Limitation Regulation deals with it.

Mr. P. Govinda Menon *(Adur).*—When a payment is made out of court under the Civil Procedure Code, within 90 days the judgment debtor has to go to court in order to compel the decree holder to record satisfaction of the decree. The executing court will not recognise payment after 90 days. No such limitation is placed here. Secondly, if this provision is accepted, the judicial work of the Panchayat Courts will increase out of all proportions. The Panchayat Courts are now meeting in almost all cases once in a week. The judges of the Panchayat Courts are persons doing honorary work. They cannot be expected to do a large amount of work without any remuneration and sacrificing their own work. If this provision is accepted, the judicial work of the Panchayats will grow out of all proportions. That is not desirable. Therefore, in the interest of simplicity, it is better that no provision is made for payment

LIBRARY ARCHIVES Kerala Legislative Assembly

out of court for subsequently a dispute between the decree holder and the judgment debtor as to whether there was a payment or not might arise.

* **Mr. E. Ikkanda Warriar** *(Urakam).*—I too oppose the amendment except the first part of it. Under clause A of the amendment, payment has to be made to the decree holder. If the provision in the Civil Procedure Code requires the giving of notice to the parties concerned, if the amounts are deposited, it will not be available for the purpose of the Panchayat Regulation. I think a provision to give notice to the decree holder of the amounts paid in court in the absence of the decree holder is absolutely necessary.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Please see section 82 of the Regulation.

Mr. E. Ikkanda Warriar *(Urakam).*—If this is so, it is on account of that section that I make the remark that in case specific provision is not made here, there will be difficulties. As was pointed out, the main difficulty that actuated the Government in bringing the amendment is to prevent money lying idle in court. I can understand if money is produced in court and if notices were given to decree holders. If that provision which requires the giving of notice was followed, if directions were given to Panchayats concerned that the moneys should be disposed or notices ought to be given, I am sure they would not have kept the money so long. Probably this amendment itself could not have been thought of. So in order that there may be no doubt on the point, the first part of the amendment that notice of such payments shall be made to the decree holder, can be incorporated in the amendment. I can make a suggestion in the first part of amendment brought forward by the Government viz., (a) payment of the decree amount into the court whose duty it is to execute the decree, provided notice is given. There must be some proviso there. So far as the other principle is concerned, in the interests of speedy justice, and I think in the scope of the Panchayat Regulation itself, it is not proper to give them work. After all, the amounts involved will be very small and the agents of the parties could not make it convenient to go to the court and receive the money. I do not think any elaborate procedure as proposed by the Hon'ble Member for Vyttila would conduce to the speedy justice that is contemplated in the Regulation itself. I therefore oppose this amendment, except (i).

* Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

* **Mr. P. Kumaran Ezhuthassan** *(Vadakkancheri).*—I do not find my way to accept the reasoning behind the position. What the amendment seeks is only to give the right to the judgment debtor whose duty it is to pay, to apply to the court and to request the court to have the payment certified. That is an elementary right of the debtor to have the payments certified. That is what the whole amendment contemplates, and I do not find any reason why my friends who have experience of courts should oppose such an amendment. The opposition is seen to be based on the fact that it voices the claim of the Panchayat Regulation which is said by them to be something standing in the way of speedy dispensation of justice to the country-folk. And the other objection is that it will increase the work of the Judges of the Panchayat Courts who are honorary workers. But considering the fact that if for any reason payment has to be made out of court into the hands of the decree-holder or the duly authorised agents, and the decree holder does not find it possible for some reason or other to come to the court and have the payment certified as contemplated by the amendment Regulation, the opposition cannot be accepted.

Mr. A. Sankara Menon *(Trippunithura).*—I may point out that 'out of court' does not mean not in the presence of court. Payment is always made in the presence of the court.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri).*—My respectful submission is this, that a judment debtor whose duty it is to pay must be given the option to pay into the hands of the decree debtor or pay it into the court. It should not be confined to the court or to the hands of the decree holder who is present in the court. The other option also must be given to them and when such option is given it follows that he must be given an opportunity to move the Panchayat Court to have that certified payment to the decree holder. Therefore it is that I submit that the amendment is one which is necessary.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I do not think I have anything more to say than what Hon'ble Members have said. It does not affect the procedures that are laid down in the Civil Procedure Code. And, besides, as correctly pointed out by the Hon'ble the Deputy President, every payment has to be made either into court or out of court. The amendment is outside the point.

Mr. A. Narayana Menon *(Vyttila).*—As pointed out by the Hon'ble Member for Vadakkancherri this amendment is

* Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

absolutely essential. The object of the main Bill is now represented to be to recognise payment into court or in the presence of the court. Why should we discountenance payment out of court? My attempt is to facilitate payments to judgment creditors or their agents whenever and wherever they are found. I do not find any difficulty at all in adopting this amendment. Then with regard to the question of limitation raised by the Hon'ble Member for Adur, Section 27 of the Panchayat Regulation provides for the difficulty. The Limitation Regulation applies to proceedings in Panchayat Courts also. The only proviso is that all applications should be filed within three years. The 90 days rule is within three years and there is no difficulty at all so far as the question of Limitation goes. I press the amendments.

Amendments were put and lost.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—May I kindly move a small amendment? Some difficulty has been expressed on the floor of this House about the construction 'out of court'. I do not think any harm will be caused by deleting those words. Even otherwise, it is quite in order.

I move that the words 'out of court' occurring in Clause (b) may be deleted.

Mr. T. S. Narayana Ayyar (*Secretary to Government*).—I second it.

Amendment was put and carried.

Clause 2, as amended, was put and carried.

Mr. President.—The question is that Clause 1 stand part of the Bill.

Short title, extent and commencement.

1. (1) This Regulation may be called the Cochin Village Panchayat (Amendment) Regulation..... of 1111.

(2) It extents to the whole of Cochin and shall come into force at once.

Clause 1 was put and carried.

Mr. President.—The question is that the Title and Preamble stand part of the Bill.

LIBRARY ARCHIVES Kerala Legislative Assembly